

**\*E-FILED: July 10, 2012\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MARY BASICH,

No. C11-04406 EJD (HRL)

Plaintiff,

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR RECONSIDERATION**

v.

**[Re: Docket No. 66]**

PATENAUDE & FELIX, APC and CAPITAL  
ONE BANK, (USA), N.A.; DOES 1-10,  
inclusive,

Defendants.

Plaintiff Mary Basich sues for alleged violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq., the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., and the California Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788, et seq. She claims that defendants improperly attempted to collect a debt from her with respect to a Capital One credit card and invaded her privacy by obtaining her credit report without her permission. Plaintiff says that this is a case of mistaken identity and that she is not the debtor. Reportedly, the debt is owed by one Mary Ryals, who used the alias "Mary Basich."

In Discovery Dispute Joint Report (DDJR) #1, plaintiff moved for an order compelling defendant to produce documents responsive to Requests for Production Nos. 1-11, 14, 17, 20 and 23. The documents at issue pertained to Ryals, and defendants asserted objections based on Ryals' privacy interests. Although defendants said that they would not object to an order

1 overruling those privacy objections and compelling production, defendants believed that they  
 2 could not properly stipulate to such an order. (See Dkt. No. 57 at 4-5). Additionally, in that  
 3 DDJR, defendants argued that the only relevant documents were those falling within the  
 4 applicable statutes of limitations. Plaintiff said nothing about that argument. And, as presented  
 5 to this court, the matter appeared to be largely undisputed, except for the date by which  
 6 defendants should produce the documents. Accordingly, this court issued an order directing  
 7 defendants to produce all responsive documents pertaining to Ryals that had been withheld  
 8 solely on the basis of Ryals' privacy rights<sup>1</sup> and which fall within the limitations period. (Dkt.  
 9 No. 61).

10 Pursuant to Civil Local Rule 7-9, plaintiff now seeks reconsideration of that order,  
 11 advising that she does, in fact, object to the temporal limitation on production.<sup>2</sup> Although  
 12 plaintiff's request for reconsideration was procedurally deficient and raised matters that should  
 13 have been addressed in the underlying DDJR, this court agreed to entertain the matter and set a  
 14 briefing schedule. Having reviewed the parties' respective papers, this court rules as follows:

15 Plaintiff now says that the parties never discussed any temporal limit on production based  
 16 on the applicable statute of limitations. She asserts, and defendants do not deny, that defendants  
 17 previously, and voluntarily, produced documents outside the limitations period. Basich further  
 18 contends that documents outside the limitations period are relevant or reasonably calculated to  
 19 lead to the discovery of admissible evidence of, for example, what defendants knew about Ryals  
 20 during the Capital One account application process; what defendants knew about Ryals during  
 21 any time period when Ryals may have paid on her account; what information defendants had or  
 22 obtained about Ryals and Basich; and whether that information showed that Ryals and Basich

---

25 <sup>1</sup> Defendants previously advised that certain documents had also been withheld  
 26 on privilege grounds and that the parties were attempting to resolve those issues.  
 27 Accordingly, this court's prior order on DDJR #1 was limited to those documents withheld  
 solely on the basis of Ryals' privacy rights.

28 <sup>2</sup> Plaintiff also sought reconsideration with respect to the court's separate order  
 on DDJR #3. She has since withdrawn that request, and her motion as to that order is  
 deemed moot.

1 were one and the same person (as defendants contend). She requests that this court order  
2 defendants to produce responsive documents from 2005 to the present.

3 For their part, defendants maintain that documents outside the limitations period are  
4 irrelevant. They take issue with plaintiff's argument that the documents in question may lead to  
5 information reasonably calculated to lead to the discovery of admissible evidence. Such  
6 information, however, falls within the scope of Fed. R. Civ. P. 26(b)(1), which defines relevance  
7 broadly for discovery purposes. And, courts have recognized that even if the statute of  
8 limitations bars liability for conduct outside the limitations period, evidence of pre-limitations  
9 conduct may nonetheless be admissible for other purposes. See, e.g., Joseph v. J.J. MacIntyre  
10 Companies, LLC, 281 F. Supp.2d 1156, 1162 (N.D. Cal. 2003). Moreover, the crux of  
11 defendants' arguments is that the documents at issue are not relevant to any of plaintiff's claims.  
12 For the reasons stated above, this court disagrees. In any event, defendants acknowledge, as they  
13 must, that parties may obtain discovery about any nonprivileged matters that are relevant to *any*  
14 party's claims or defenses. FED. R. CIV. P. 26(b)(1). Defendants apparently believe documents  
15 pertaining to Ryals outside the limitations period are relevant to this action. Indeed, they have in  
16 recent weeks filed several discovery reports (all of which were essentially granted as unopposed)  
17 seeking information pertaining to Ryals spanning more than a decade.

18 Plaintiff now also contends that defendants have waived any objections based on Ryals'  
19 privacy interests. Defendants disagree. This court sees no need to belabor the point. For  
20 purposes of resolving the instant discovery dispute, and as noted above, defendants have already  
21 told this court that they do not object to an order overruling their objections based on Ryals'  
22 privacy rights. (Dkt. No. 61 at 4-5).

23 Accordingly, plaintiff's motion for reconsideration is granted. To the extent it was  
24 unclear in this court's prior order, defendants' objections to the requested production based on  
25 Ryals' privacy interests are overruled. Defendants shall produce all documents, from 2005 to the  
26 present, that are responsive to the requests at issue and that have been withheld solely on Ryals'  
27 privacy interests. Defendants' production shall be completed within 7 calendar days from the  
28

1 date of this order.

2 SO ORDERED.

3 Dated: July 10, 2012

4   
5 \_\_\_\_\_  
6 HOWARD R. LLOYD  
7 UNITED STATES MAGISTRATE JUDGE  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

5:11-cv-04406-EJD Notice has been electronically mailed to:

Balam Osberto Letona letonalaw@gmail.com

Candice Lynn Fields cfields@kmtg.com, lchenknapp@kmtg.com, mmcguire@kmtg.com,  
SRamirez@kmtg.com

Danielle Renee Teeters dteeters@kmtg.com, sramirez@kmtg.com

June D. Coleman jcoleman@kmtg.com, krockenstein@kmtg.com, lchenknapp@kmtg.com

Lucius Wallace luke@hwh-law.com, tammy@hwh-law.com

Robert David Humphreys david@hwh-law.com, tammy@hwh-law.com